

IN THE UNITED STATES ARMY  
FIRST JUDICIAL CIRCUIT

UNITED STATES )

)  
) **ADDENDUM TO**  
) **DEFENSE MOTION TO**  
) **COMPEL DISCOVERY #2**

v. )

)  
) **MANNING** PFC  
) U.S. Army, (b) (6)  
) Headquarters and Headquarters Company, U.S.  
) Army Garrison, Joint Base Myer-Henderson Hall,  
) Fort Myer, VA 22211 )

7 June 2012

ADDITIONAL FACTS

1. On 7 June 2012, the Court heard testimony from the following Department of State witnesses:

- (a) Ms. Marguerite Coffey;
- (b) Ms. Rena Bitter; and
- (c) Ms. Catherine Brown.

2. Each witness testified about their personal knowledge concerning whether the following documents existed with respect to the following within the Department of State:

(a) The Chiefs of Mission review of the released cables at affected posts discussing their initial assessment, as well as their opinion regarding the overall effect that the WikiLeaks release could have on relations within their host country, if any;

(b) The WikiLeaks Working Group composed of senior officials throughout the Department that was created to review potential risks to individuals from the release of cables by WikiLeaks, if any;

(c) The "Mitigation Team" created by the Department of State to address the policy, legal, security, counterintelligence, and information assurance issues presented by the release of the documents to WikiLeaks, if any;

(d) The Persons at Risk Working Group created by the Department of State to identify any individuals that may be placed at risk due to the publication of the diplomatic cables and to address any measures that may be needed; AND

(e) The Department's reporting to Congress concerning any effect caused by the WikiLeaks' disclosure and the steps undertaken to mitigate them, if any. The Department convened two separate briefings for members of both the House of Representatives and the Senate in December of 2010. The Department also appeared twice before the House Permanent Select Committee on Intelligence on 7 and 9 December 2010.

3. The above listed witnesses' testimony confirmed the existence of Defense requested records. The testimony also disclosed the following additional information:

(a) The Chiefs of Mission produced written assessments of the leaked cables based upon their independent review. These written submissions were then used to formulate a portion of the draft damage assessment completed in August of 2011;

(b) The WikiLeaks Working Group created a written Situation Reports approximately twice a week during the groups time period of operation roughly from 28 November 2010 until 17 December 2010.

(c) The Department of State Mitigation Team had written minutes of its meetings and written agendas for it work. Part of the Mitigation Team's efforts concentrated on counterterrorism concerns;

(d) The Persons at Risk Group created and Information Memorandum for the Secretary of State and a matrix to track identified individuals. The Group also put out formal guidance to all embassies concerning the Department of States' efforts and authorized actions for any identified person at risk; AND

(e) The Director of the Office of Counterintelligence within the Department of State had been collecting information regarding any possible impact from the disclosure of diplomatic cables. The collection of this information was intended to possibly be used to update the August 2011 draft damage assessment should the Department consider this a worthwhile endeavor.

(f) The Department of State's reporting to Congress. The Department likely produced a prepared written statement for the testimony on 7 and 9 December 2010 as it had done for Ambassador Patrick Kennedy's testimony on 11 March 2011.

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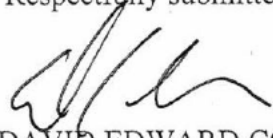
4. The Government has a due diligence duty to search for evidence that is favorable to the defense and material to guilt or punishment. *Brady v. Maryland*, 373 U.S. 83, 87 (1963); R.C.M. 701(a)(6). The trial counsel's due diligence duty applies to: "(1) the files of law enforcement authorities that have participated in the investigation of the subject matter of the charged offense; (2) investigative files in a related case maintained by an entity closely aligned with the prosecution; and (3) other files, as designated in a defense discovery request, that involved a specified type of information within a specified entity." *United States v. Williams*, 50 M.J. 436, 441 (C.A.A.F. 1999) (internal quotations and citations omitted).

5. "For relevant files known to be under the control of another governmental entity, Trial Counsel must make the fact known to the Defense and engage in good faith efforts to obtain the material." Appellate Exhibit XXXVI at 8, para. 3. The Defense has requested the above specific information from within the Department of State.

6. There may, of course, be other files at the Department of State of which the Defense is unaware. The trial counsel bears an obligation to search these files, *in addition to those specified above*, pursuant to the second prong of *Williams*.

7. The Defense maintains that all of the above information is discoverable under R.C.M. 701(a)(6) and R.C.M. 701(a)(2).

Respectfully submitted,



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Civilian Defense Counsel